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INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Judge Antonio CASSESE, President of the International Criminal Tribunal for the Former Yugoslavia, discusses the formation of the UN's first international criminal tribunal. Judge Cassese, a distinguished Italian jurist, reviews the mandate given to the Tribunal by the Security Council to investigate and bring to justice those accused of war crimes, genocide and other crimes against humanity in the former Yugoslavia. He also outlines the structure and operating procedure of the Tribunal, which will consist of 11 judges in two trial courts and an appellate court sitting in The Hague, Netherlands. Judge Cassese also discusses the conceptual and practical difficulties encountered in setting up the Tribunal, which is without benefit of precedent in international law.

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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues. Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**.

For the first time in its almost 50-year history, the United Nations has established an international criminal tribunal. Set up by the Security Council, the International Criminal Tribunal for the Former Yugoslavia sits in The Hague in the Netherlands. Its task is to prosecute and bring to justice those accused of war crimes, genocide and crimes against humanity in the former Yugoslavia.

Our guest today is President of the Tribunal, Judge Antonio Cassese of Italy. Judge Cassese, who holds a professorship at Florence University, is a long-time member of the UN's Human Rights Commission and has been delegate of the Italian Government to the Council of Europe's Steering Committee for Human Rights as well as President of its Committee for the Prevention of Torture.

Joining me to talk with Judge Cassese are James Bone of *The Times* of London and Evelyn Leopold of Reuters. Judge Cassese, welcome to World Chronicle.

Judge, tell us a bit about the Tribunal: How do you go about your work? How many judges are there? Do you have an investigative staff? How do you amass the information that you need to bring people to trial?

CASSESE: The Tribunal consists of 11 judges, and we are divided up into three chambers -- two trial chambers and one appeals chamber.

LITTLEJOHNS: One what chamber?

CASSESE: Appeals chamber, appellate chamber. We call it appeals chamber according to our statute, so that we have two degrees of jurisdiction. This is one of the major requirements laid down in the UN Covenant on Civil and Political Rights, the right of everybody to appeal. In addition to 11 judges, there is an Office of the Prosecutor, headed by Justice Goldstone --

LITTLEJOHNS: Of South Africa.

CASSESE: -- of South Africa, with quite a few, 20 investigators and lawyers and -- about 70 people right now. And they carry out investigations and prosecutions. And the third organ of our Tribunal is the Registry, headed by a Registrar. They have administrative tasks; they have got to service both the chambers and the Prosecutor, from the point of view of administration.

LITTLEJOHNS: And what sort of jurisdictional guidelines do you plan to use for prosecutions?

CASSESE: Well, we have a statute, which was adopted, as you know, by the Security Council. When the Security Council last year passed a resolution setting up our Tribunal, by the same token they also adopted our statute, which is a sort of constitution, our charter. And there they laid down not only the main guidelines for the conduct of trials, or proceedings, prosecutions, but also the list of crimes -- the basis for our jurisdiction, the crimes we have been called upon to try and to deal with. So therefore we have five provisions where it is stated that we are competent to deal with war crimes, crimes against humanity, genocide, and so on. So therefore, there, in our statute, we find that.

LITTLEJOHNS: And you draw upon all legal systems?

CASSESE: No. We had a problem, because the statute is fairly loose, vague, as I said, just a few provisions about the major questions of our jurisdiction, the major crimes we are going to deal with -- you know, war crimes and genocide, what is genocide, what do you mean by genocide, and so on. So we had a problem, namely, the problem of defining. And this will be done actually by the trial chambers. But an even more serious problem was to outline the procedure. What sort of procedure would we take up before this Tribunal? We had no precedent at hand. Of course, there were two tribunals in Nuremburg and Tokyo, but there it was taken for granted that the Anglo-American, Anglo-Saxon system would be taken up -- the adversarial system, where you have cross-examination and so on. Why? Because -- for obvious political reasons. Because in particular in Nuremburg the Americans were the dominating Power and the other countries, even France, accepted the system without any opposition. And their rules of procedure -- namely, the set of guidelines which define how the trial is conducted -- their rules of procedure ran up to about three and a half pages, so, almost nothing.

And so we had to start from scratch and decide whether we would, say, stick to the European, continental model -- you know, the so-called inquisitorial model, where you have a sort of *juge d'instruction*, or whether we should follow the Anglo-American system, the system of common law. And so, after lengthy discussions we drafted a sort of mini-code of criminal procedure. And it is unprecedented. We had to sail into uncharted waters in a way, because, as I said, there was no precedent at hand, and we had a problem, namely, to combine the various experiences of the 11 judges. There is a judge from China, one from Pakistan, one from Australia, one from Malaysia, one from Costa Rica, one from France, one from Italy -- imagine. So each of us had his own experience or her own experience.

LITTLEJOHNS: Is there an American judge?

CASSESE: Yes, of course, Judge McDonald, a lady, a woman, a very competent judge. And she also came, of course, with her own experience. She had been a judge for about 12 years in a district court. And so therefore we had to make a huge effort to try to, in

a way, amalgamate and distil the best of all the various experiences, all the legal systems of the world. And I think we came up with a fairly good result. By and large, our system is modeled on the Anglo-Saxon system, but with a lot of innovations, improvements, and the best parts taken from the European continental system.

BONE: You have actually now a Prosecutor, so you have a separate Prosecutor, and then the court, the judicial authority. But when the Security Council first set up the Tribunal, it was able to find the judges, the General Assembly elected the 11 judges, but it took months, I think a year or more than a year, to find a good prosecutor. There were several candidates who were vetoed either because they were considered as being too pro-Muslim, or they were considered too weak, or they lacked prosecutorial experience. Finally, you've got Justice Goldstone. In that year that there was no Prosecutor, so there were no cases, what did the judges do?

CASSESE: Well, you know, actually we -- first of all, let me point out that a Prosecutor had been appointed by the Security Council. It was the chief prosecutor of Venezuela.

BONE: Well, he lasted about a month, I think, so....

CASSESE: No. But he accepted, no, he --

LEOPOLD: Yes, but there has been no indictment for eighteen months.

CASSESE: No, he accepted, and said, "But I can't take office, because I've got to finish my job in Venezuela." To indict his former President. And so the Secretary-General said, "All right, so you take office in February," on 1 or 2 February 1994. And meanwhile, we started with our rules of procedure, this mini-code of criminal procedure. So we did do a lot of work; we had quite a few things to do. But then, on 2 February, all of a sudden he told us, "Look, I'm afraid I've been offered a job as Minister of the Interior" -- which means Prime Minster in Venezuela -- "so I will not be able to accept." At that stage, I consulted with Boutros-Ghali, and I think we agreed that at least we should ask Mr. Escovar, this Venezuelan prosecutor, before stepping down to at least appoint a deputy. And Mr. Blewitt from Australia was appointed as a deputy. And he was excellent. But as a deputy, he lacked, according to most judges, the legal authority to start investigations or prosecutions, because under our statute it is only the Prosecutor who can, as I say, decide where, how, and go about prosecution and so on.

LITTLEJOHNS: Not even an acting Prosecutor? I mean, after all, he was -- if he was appointed --

CASSESE: He was, as I say --

LITTLEJOHNS: But surely in that capacity he was an acting Prosecutor, wasn't he?

CASSESE: No, no. Because he was -- you know, there again, there was a very interesting difference of opinion between some judges, including myself and the French judge, and the judges who come from the Anglo-Saxon system. Because in our countries, a deputy or assistant prosecutor has the same authority, legal authority, as the chief prosecutor. In our countries, in continental Europe, the prosecutor is not a political appointee. He is somebody who is just the head of the office but can be replaced at any time by one of his deputies. So we felt that even Mr. Blewitt as deputy prosecutor had full legal authority to start investigations. Our colleagues, the majority in our Tribunal, said, no, no, in our -- see, we come from systems where the prosecutor is appointed as a result of a political decision. He is the man in charge, and only the prosecutor can start investigations. So, therefore, there was again a very interesting -- I will not say a rift, but a difference, a major difference of opinion. So we got stuck. And Mr. Blewitt, for a few months, was there with just one secretary. So for about four months the Office of the Prosecutor, which on paper should consist of about 100 people, consisted actually of only Mr. Blewitt and one secretary.

But in spite of all that, he was brave, and because he is a very good man, he thought, at least let me set up the Office of the Prosecutor, namely, let me hire staff. And he started recruiting, interviewing people, recruiting staff. And as a result of that, when Justice Goldstone was appointed -- on 8 July I think, by the Security Council -- as Prosecutor, and when he took office on 15 August of this year, he came to The Hague and found a good staff. So in a way it was not a waste of time.

LITTLEJOHNS: Judge, let's not get too much involved in details. I think Evelyn Leopold has a question.

LEOPOLD: The first indictment has just occurred, with a Bosnian Serb.

CASSESE: Yes. Mr. Nikolic.

LEOPOLD: Right, who is in jail in Germany, and so forth.

CASSESE: No, sorry, no, that was not the first indictment. No, the first indictment was against Mr. Nikolic, who is not in jail.

LEOPOLD: Who is not in jail, that's true.

LITTLEJOHNS: Where is Mr. Nikolic?

CASSESE: He is in Bosnia and Herzegovina, in the area under controlled by Dr. Karadzic.

BONE: So how is he going to get to The Hague?

CASSESE: We will see.

LEOPOLD: Do you think that we'll ever see -- will all the suspects, will all the people indicted be Serbs, or do you think that would --

CASSESE: Oh, no, no.

LEOPOLD: No?

CASSESE: No, not at all. This is one of the main points made by Justice Goldstone, and we, all the judges, we fully agree with him, although, of course, he's fully independent in his policy as far as the prosecutions are concerned, and indictments. I will say one of his major points is that he wants to be even-handed. And so his plan was to start with three indictments at the same time, one against a member of each of the ethnic groups. An indictment against a Bosnian Serb --

BONE: That sounds like some kind of a strange quota system for war crimes.

LEOPOLD: Yes.

BONE: I mean, why are these not regular --

CASSESE: No, just to show that he's fully impartial. And also because then this way he would first of all show that he's, as I say, totally independent and impartial, and also to enlist the support of those countries which are -- in particular Serbia and Montenegro -- which tend to be a bit suspicious and non-cooperative.

LEOPOLD: The Serbs have said that they won't cooperate, both Yugoslavia -- you think this would change their mind? -- and the Bosnian Serbs.

CASSESE: Well, gradually they will realize that Justice Goldstone intends to be, and will be, absolutely unbiased. And the question is a question of evidence. So, so far, in a way, he has been able to collect more evidence against two people who happen to come from Bosnia and Herzegovina and to be Serbs.

LITTLEJOHNS: This is World Chronicle, our guest is Judge Antonio Cassese, President of the International Criminal Tribunal for the Former Yugoslavia. Evelyn, you have a follow-up there?

LEOPOLD: Yes. At one point the United States suggested that Milosevic, the head of Serbia, and Karadzic, the Bosnian Serb leader, be indicted. Do you think the court would ever go that high?

CASSESE: Why not? I mean -- well, of course, first of all, this is for the Prosecutor to decide. But the Prosecutor was asked this question many times, and his answer, I think, is the good answer, which is that it really depends on the evidence. You know, a usual question is "Are you going after the small fry or the big shots?" Of course, the impression is that it's much easier to get good evidence, to collect solid evidence about those who have actually perpetrated war crimes or genocide, whereas it is more difficult to find evidence which can stand up in court, which can be produced in court, and can of course bear --

BONE: Well, Judge, the historical experience is that the only people who've ever been tried for genocide and war crimes are the leaders, actually, before international tribunals. In Nuremburg and Tokyo, people were trying leaders, they weren't trying followers.

LITTLEJOHNS: And if you have to try followers as well, you'd be there for years, surely.

CASSESE: Yes, but you know, in Tokyo and Nuremburg it was so easy for the prosecutors to get hold of solid evidence, first of all, because, particularly in Germany, there were a lot of documents which were seized by the occupying armies, and also because the defendants were in the hands, had been apprehended by the --

BONE: So what kind of evidence -- I mean, speaking as a judge, what kind of evidence do you need to establish the guilt of a leader as opposed to somebody who actually commits the act on the ground? What kind of thing are you looking for, a chain of command, or --?

CASSESE: Yes. I imagine, of course -- I can't go into details because this would be contrary to my duty as a judge, but in theory, let us say, as a theoretical problem, I would assume that there you can have various kinds of evidence. First of all you can have, say, testimonies by people who have executed orders and who can tell you, who can say in court, "Look, I received this order from my commander," or from this political leader, or from that general. Then you may have documentary evidence, a written order. I think that in the former Yugoslavia it will be very difficult, because now, of course, people know that they should not behave as the Germans, who had all these orders in five copies, well-documented and so on. So therefore it will be difficult to find, say, written documents. However, we may; we might come across written documents. You may have, say, statements made by the political or military leaders on TV, radio, so tapes, and so on. But as I say, what is crucial is -- also for other crimes, for crimes committed by the perpetrators, not by those who gave orders -- what is crucial is the testimony of witnesses.

BONE: Can I ask you about the second international tribunal that the Security Council has set up, which is the [International] Tribunal for Rwanda, which overlaps, to some extent, with your Tribunal on Yugoslavia. I think that the appellate chamber is going to be the same --

CASSESE: Yes.

BONE: -- and the Prosecutor's Office is going to be the same, yet in Rwanda, we are talking about a trial to go after the leaders of the genocide in Rwanda. I mean, aren't you going to find yourself in a very sticky situation legally where you're applying one standard and one set of procedures to Yugoslavia and another one to Rwanda, and yet they both have the same appellate chamber?

CASSESE: No. Because, you know, I think it very much depends on the historical circumstances. In Rwanda, of course, since there are about 6,000 people already in jail and there is already evidence about the leaders, say in particular Radio Mille Collines -- there they

even have documents, tapes -- it will be much easier and quicker to bring the leaders to trial. Those who instigated --

BONE: But surely in the case of Yugoslavia there are tapes of radio transmissions of people calling on people -- of radio intercepts of leaders calling for bombing of civilian targets, which is a war crime, I think.

CASSESE: Yes. And then, as I say, if this evidence can be collected by our Prosecutor, there's no doubt in my mind or in the Prosecutor's mind that he will indict those people who gave orders.

LITTLEJOHNS: Judge, what is the defence procedure? Who provides the defendants with defence mechanisms, lawyers, et cetera? Are they going to have to pay for them themselves?

CASSESE: If they can afford to pay, they will pay. If they are indigent, of course, we will provide legal counsel. We have established a sort of directive, a set of guidelines about the appointment of legal counsel, and we are establishing a panel of international lawyers, lawyers coming from various parts of the world, in particular from the former Yugoslavia. We have quite a few names of distinguished practitioners from the former Yugoslavia who have offered to be there and be paid by our Tribunal for the purpose of acting as defence lawyers for the defendants. So we are very keen to safeguard all the rights of the accused.

LEOPOLD: There were some apprehensions when the court began that they would interfere, that the work of the Prosecutor and the courts would interfere with possible peace negotiations that seemed to be on and off. Do people still fear this, or has this been overcome?

CASSESE: No, no. People still fear that there might be some -- yes, there might be a sort of interference. But we -- I mean we in The Hague -- tend to take the view that these are two different avenues, in a way. One path is that of political negotiation, and the other path is to render justice. And we feel that we are not bound by whatever decision is taken at the political level.

BONE: Tell me something. On the possibility of an amnesty, which is a key question in peace negotiations, if the peace negotiators -- if the UN negotiator and the European Union negotiator agree to a plan that gives amnesty to everybody in the former Yugoslavia, is that legally possible, or does the court still go ahead and prosecute?

CASSESE: It is legally possible for them to agree upon a particular political settlement and to grant amnesty, but my personal view is that we are not bound at all by any such legal settlement.

BONE: So amnesty's out of the window, really?

CASSESE: No, as I say, we are not bound. I mean, for us, it's something which has --

LEOPOLD: Then you could see a situation where within the former Yugoslavia amnesty were given, but if these people left the country, they would be subject to your jurisdiction?

CASSESE: Yes. Yes. Of course.

LITTLEJOHNS: What about sentences? There's going to be no capital punishment --

CASSESE: Of course not.

LITTLEJOHNS: -- although these guys are murderers. Why'd you say "of course not"?

CASSESE: Because I think it is highly civilized not to have a death penalty. I, myself -- I mean, there is even a protocol in the UN against the death penalty. And I think the Security Council was absolutely right in ruling out the death penalty, whatever the gravity of the crimes. I don't think that you -- I mean, there is no controversy about whether or not --

LITTLEJOHNS: So do you have sentencing guidelines, as they say in the United States?

CASSESE: Yes. Actually, there is just one provision stating that when sentencing, when deciding on the sentencing of those defendants that we have found guilty, we have to rely upon the practice of the criminal courts in the former Yugoslavia. So this is our sort of guidelines. And actually we have carried out in-depth research on their judicial practice. We have collected all the judgements and sentences and so on. And, of course, their criminal codes.

LITTLEJOHNS: So life imprisonment is a possibility.

CASSESE: Yes. Yes, the maximum.

LITTLEJOHNS: And where? Yes. But where are they going to be incarcerated in that event?

CASSESE: Not in the Netherlands. Because we do have a prison -- actually it's a remand prison, it's a detention centre, we call it, with 24 cells, but only for people awaiting trial. If they are acquitted, all right, they go home, but if they are found guilty, of course they should be sent to one of the countries which has agreed to host, as it were, the sentenced people.

LEOPOLD: Do you have a list of countries now?

CASSESE: I'm afraid very few countries so far have declared that they are....

LEOPOLD: Which ones have?

CASSESE: Well, I can't name them, because we are in the process of negotiation. But I intend in the next few weeks to ask more European countries. Because, you know, my feeling is that we should, as much as possible, apply a very important treaty which was ratified

in Europe. It's the European convention on the serving of sentences. And the basic notion underlying this convention is that somebody who is brought to trial and sentenced in a country as a foreigner should serve his sentence in his own national country or in a country which is very close to it. Why? Because it is more humane. You may have committed horrendous crimes, but still you are a human being, and you may wish to receive visits from your relatives, or to be in a prison where everybody speaks your language. So I would never suggest that one of those found guilty and sentenced by us should serve his prison sentence in the US or in Malaysia or in Australia. Unless, of course, he has relatives there. Because, as you know, there are a lot of people from the former Yugoslavia --

BONE: With the Rwanda trials and the Yugoslav trials, you could end up with quite a lot of prisoners. I mean, what about the idea of creating some kind of international jail, like the Spandau prison in Berlin that was patrolled by the four Allies after World War Two?

CASSESE: Well, I think this is not realistic. I would exclude -- first of all, I mean, where? Where would you build this?

LEOPOLD: The Netherlands.

BONE: Well, you've got 25 cells in The Hague.

LEOPOLD: Yes.

CASSESE: Yes, but as I say, only for people awaiting trial. But --

LITTLEJOHNS: But you could change that.

CASSESE: Yes, but, I mean, why there? Because, again, this would be against the principle which I have just mentioned, namely --

LEOPOLD: Assuming that you had one trial every six weeks.... Do you expect to have even more than a dozen trials a year? How many people do you think would be tried in total?

LITTLEJOHNS: Judge, you have only a few seconds to answer that.

CASSESE: Not more than one or two hundred people. So therefore these are symbolic, these will be symbolic trials. So, I mean, we will be extremely selective --

LEOPOLD: So that your jails -- it's not such a large jail population you're looking at.

CASSESE: Yes, exactly.

LITTLEJOHNS: Judge Cassese, that's all the time we have. Thank you for being with us on this edition of World Chronicle. Our guest has been Judge Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia. He was interviewed by James Bone of *The Times* of London and Evelyn Leopold of Reuters. I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of World Chronicle.

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